IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 21, 2007

EDDIE E. GLENN v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Bledsoe County
No. 83-2006 J. Curtis Smith, Judge

No. E2007-00550-CCA-R3-HC - Filed January 8, 2008

Petitioner, Eddie E. Glenn, appeals the trial court's dismissal of his petition for writ of habeas corpus in which he contended that his sentence for his first degree premeditated murder conviction is illegal and void. After a thorough review, we conclude that the trial court erred in dismissing the petition, and we reverse and remand the case with instructions for the Bledsoe County Circuit Court to grant the petition and transfer the case to the Union County Criminal Court for correction of the judgment in accordance with this opinion.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Circuit Court Reversed and Remanded

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, joined.

Eddie E. Glenn, Pikeville, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; J. Michael Taylor, District Attorney General; and J. William Pope, III, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

Following a jury trial, Petitioner was convicted of first degree premeditated murder for the killing of Bill Lawson which occurred on June 26, 1989. The trial court sentenced Petitioner to life imprisonment on February 7, 1990. Petitioner's conviction and sentence were upheld on appeal. *State v. Eddie Glenn*, No. 31, 1991 WL 120400 (Tenn. Crim. App., at Knoxville, July 9, 1991), *perm. to appeal denied* (Tenn. Dec. 2, 1991). Petitioner subsequently filed two petitions for post-conviction relief, the dismissal of which was upheld on appeal. *Eddie Glenn v. State*, No. 03C01-9311-CR-00362, 1995 WL 108273 (Tenn. Crim. App., at Knoxville, Mar. 8, 1995); *Eddie Glenn v. State*, No. 03C01-9703-CC-00115, 1998 WL 78713 (Tenn. Crim. App., at Knoxville, Feb. 6, 1998).

The judgment provides the date of the offense, June 26, 1989, the date of sentencing, February 7, 1990, and sentences Petitioner to life imprisonment. Petitioner contends that he was entitled to be sentenced under the 1982 Sentencing Act because the offense was committed prior to November 1, 1989, the effective date of the 1989 Sentencing Act. *See* T.C.A. § 40-35-117(b). Petitioner points out, however, that his judgment of conviction also erroneously notes that Petitioner is "a standard Range I (30%) offender," and first degree murder is a "Class A felony." Petitioner argues that the use of the term "Class A felony" indicates that he was erroneously sentenced under the 1989 Sentencing Act rather than the 1982 Sentencing Act because that terminology only arose with the enactment of the 1989 Act. *See* T.C.A. § 40-35-110 (1989) (classifying felonies for sentencing purposes into five categories).

The trial court dismissed Petitioner's habeas corpus petition, finding that the erroneous notations on the face of the judgment were clerical errors which could be corrected pursuant to Rule 36 of the Tennessee Rules of Criminal Procedure. The trial court did not address Petitioner's contention that he was sentenced under the wrong sentencing act.

II. Standard of Review

Tennessee law provides that "[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever ... may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment." T.C.A. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004) (citing *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993)). To prevail on a petition for writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. *See State ex rel. Kuntz v. Bomar*, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. *Hickman*, 153 S.W.3d at 20; *see also State ex rel. Byrd v. Bomar,* 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); T.C.A. § 29-21-109. The determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the trial court's finding de novo without a presumption of correctness. *Summers*, 212 S.W.3d at 255.

The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsome v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer*, 851 S.W.2d at164. Because in Petitioner's case, the trial court apparently had jurisdiction over the subject matter and the person of Petitioner, Petitioner's jurisdictional issues are limited to the claims that the trial court was without authority to enter the judgment. *State ex rel. Anglin v. Henderson*, 575 S.W.2d 284, 287 (Tenn. 1979) ("'Jurisdiction' in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned."); *see also Archer*, 851 S.W.2d at 164.

III. Analysis

We observe initially that the trial court, and the State in its brief, apparently construed the basis of Petitioner's second habeas corpus claim as resting solely upon the erroneous notations reflected on the judgment form. The State thus argues in its brief that Petitioner's contention that he was sentenced under the wrong sentencing act is raised for the first time on appeal and, the issue is therefore waived.

Although it appears that Petitioner interchanged the dates "1989" and "1982" at various points in his *pro se* petition, a reading of the petition in context demonstrates that Petitioner, however inartfully, was attempting to challenge his sentence based upon a contention that he was wrongfully sentenced under the 1989 Sentencing Act. In his habeas corpus petition, Petitioner submitted "that the trial court imposed the maximum penalty of life with parole, Class A felony, which means under the 1989 sentencing act, he would have to serve thirty-six (36) calendar years before becoming eligible for parole, thereto, the petitioner's judgment which show[s] Class A [designation] is in direct contravention of the sentencing act therefore requiring petitioner's judgment void." Thus, we will address Petitioner's issue on the merits.

Alternatively, the State argues that Petitioner's claim that he was not sentenced under the proper sentencing act is not a cognizable claim for habeas corpus relief. The State cites *Ronald L. Davis v. Morgan*, No. M1999-00965-CCA-R3-PC, 1999 WL 1073702 (Tenn. Crim. App., at Nashville, Nov. 29, 1999), *perm. to appeal denied* (Tenn. May 15, 2000) in support of its position, in which a panel of this Court observed, without analysis, that "[e]ven if we were to accept the Defendant's argument as correct and assume that he was inappropriately sentenced under pre-1982 law, we must reach the same conclusion: the Defendant is not entitled to habeas corpus relief on the basis of his petition." *Id*. 1999 WL 1073702, at *2.

Since *Ronald L. Davis*, however, out supreme court has emphasized that "the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus," if the petitioner meets the stringent requirements for obtaining habeas corpus relief. *Moody v. State*, 160 S.W.3d 512, 516 (Tenn. 2005). That is, the petitioner must comply with the procedural requirements for a habeas corpus action, and, to succeed, the illegality of the sentence must be evident on the face of the judgment or in the record of the underlying proceedings which gave rise to the illegal judgment. *Smith v. Lewis*, 202 S.W.3d 124, 127 (Tenn. 2006); *Moody*, 160 S.W.3d at 516; *see also, e.g., Ronald W. Rice*, No. E2003-00328-CCA-R3-PC, 2003 WL 21972930 (Tenn. Crim. App., at Knoxville, Aug. 19, 2003), *perm. to appeal denied* (Tenn. Feb. 2, 2004) (addressing the petitioner's claim that he was erroneously sentenced under the 1982 Sentencing Act rather than the 1989 Sentencing Act in a habeas corpus proceeding); *Rodney Buford v. State*, No. M1999-00487-CCA-R3-PC, 2000 WL 1131867 (Tenn. Crim. App., at Nashville, July 28, 2000), *perm. to appeal denied* (Tenn. Jan. 16, 2001) (addressing the petitioner's habeas corpus claim that he was erroneously sentenced under the 1989 Sentencing Act rather than the 1982 Sentencing Act).

Tennessee Code Annotated section 40-35-117 provides that persons sentenced after November 1, 1989, for crimes committed between July 1, 1982, and November 1, 1989, must be sentenced under the 1989 Act, "[u]nless prohibited by the United States or Tennessee Constitution." T.C.A. § 40-35-117(b). That is, a defendant sentenced after November 1, 1989, for a crime committed prior to that date may not receive a greater punishment than what he or she would have received under prior law. *Id*., Sentencing Commission Comments. In order to comply with the ex post facto prohibitions of the United States and Tennessee Constitutions, our supreme court has instructed that:

> trial court judges imposing sentences after the effective date of the 1989 statute, for crimes committed prior thereto, must calculate the appropriate sentence under both the 1982 statute and the 1989 statute, in their entirety, and then impose the lesser sentence of the two.

State v. Pearson, 858 S.W.2d 879, 884 (Tenn. 1993).

The crux of Petitioner's argument is that although he was subject to punishment by life imprisonment for his first degree murder conviction under both the 1989 Sentencing Act and the 1982 Sentencing Act, the higher release eligibility established by the 1989 Sentencing Act for this offense exposed him to a greater punishment under that Act than the 1982 Act. That is, the release eligibility under the 1982 Act is thirty years. T.C.A. § 40-35-501(f) (repealed 1989). Release eligibility for a life sentence under the 1989 Act is sixty percent of sixty years, or thirty-six years. T.C.A. § 40-35-501(g)(1989).

"[T]he repeal of parole eligibility standards previously available to an inmate implicates the Ex Post Facto Clause if the effect of the repeal is to impose a greater or more severe punishment than was proscribed by law at the time of the offense." *Kaylor v. Bradley*, 912 S.W.2d 728, 732 (Tenn. App. 1995); *see also Bruce C. Slater v. State*, No. 03C01-9702-CR-00081, 1997 WL 776350, at *2 (Tenn. Crim. App., at Knoxville, Dec. 18, 1997), *perm. to appeal denied* (Tenn. June 1, 1998) (concluding that even though the amount of time of incarceration attributed to the petitioner's offense under both sentencing acts was the same, thirty years, the release eligibility of forty-five percent under the 1989 Sentencing Act as opposed to the thirty percent release eligibility under the 1982 Sentencing Act resulted in a potentially more severe punishment under the 1989 Sentencing Act).

Petitioner committed the offense resulting in his first degree murder conviction on June 26, 1989, before the effective date of the 1989 Sentencing Act. Although Petitioner was sentenced after November 1, 1989, he was entitled to be sentenced pursuant to the 1982 Sentencing Act because he faced a more severe punishment under the 1989 Sentencing Act. T.C.A. § 40-35-117(b); *Pearson*, 858 S.W.2d at 884.

"Because this is a habeas corpus proceeding, we are limited to considering the face of the judgment and the record of the proceedings upon which the judgment was rendered." *Smith*, 202

S.W.3d at 128. The record contains the indictment dated September 25, 1989, charging Petitioner with the first degree premeditated murder of Bill Lawson on June 26, 1989, the judgment dated February 7, 1990, sentencing Petitioner to life imprisonment, and two pages of the trial transcript. The judgment form does not indicate which sentencing act was applied by the trial court. The judgment states the date of the offense and Petitioner's conviction of first degree premeditated murder, and imposes a sentence of life imprisonment. The sentence imposed was authorized under both the 1989 and the 1982 sentencing acts. T.C.A. § 39-2-202(b) (repealed 1989); T.C.A. § 39-13-202(b)(1989).

Although the transcript of Petitioner's sentencing hearing is not included in the record, Petitioner attached two pages of trial transcript as an exhibit to his habeas corpus petition. It appears from this portion of the transcript that the trial court addressed the sentencing issue at trial during a hearing out of the presence of the jury, during which the following colloquy occurred:

[THE COURT]:	I might ask you, [defense counsel], since you have made that request, in view of the new law and the fact that it is now February, 1990, and this event occurred on June 26th, 1989, to provide me with what you believe to be the penalties.
[DEFENSE COUNSEL]:	I believe it to be the old law, Your Honor.
[THE COURT]:	All right. You do want the old law in its entirety applied to this case?
[DEFENSE COUNSEL]:	As to the penalties, Your Honor.
[THE COURT]:	All right. Is that correct?
[PROSECUTOR]:	I understand he gets the benefit of the lesser one, yes sir.
[THE COURT]:	Thank you, gentlemen.

Thus, it appears that the trial court intended to sentence Petitioner under the 1982 Sentencing Act. We note parenthetically that Petitioner has also included in the record a portion of what appears to be the transcript from one of his post-conviction hearings that indicates that Petitioner's post-conviction counsel was concerned that the Department of Correction was incorrectly calculating Petitioner's release eligibility under the 1989 Sentencing Act rather than the 1982 Sentencing Act. In order to obtain habeas corpus relief, Petitioner must show that his judgment is void only from the original trial record itself or the face of the judgment. *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000). "In all cases where a petitioner must introduce proof beyond the record to establish the invalidity of his conviction, then that conviction by definition is merely voidable, and a Tennessee

court cannot issue the writ of habeas corpus under such circumstances." *Id*. Moreover, calculations of time credits and matters relating to sentence reduction credits are internal matters of the Department of Correction which are not cognizable in a habeas corpus proceeding and must be addressed through the procedures set forth in the Uniform Administrative Procedures Act. T.C.A. § 4-5-101 to 4-5-324; *Carroll v. Raney*, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1993).

Nonetheless, even though the record reflects that the trial court sentenced Petitioner pursuant to the 1982 Sentencing Act, the record before us contains a judgment with erroneous notations in direct contravention of the statutes governing Petitioner's sentence. T.C.A. § 39-13-202 (repealed 1989) (providing that first degree murder is a Class X felony); T.C.A. § 40-28-116(b)(2) (repealed) (any person sentenced to life imprisonment shall serve no less than thirty years before becoming eligible for parole).

In *Moody*, the court oberved that erroneous notations in judgment forms had often previously been addressed by defendants through a motion to correct an illegal sentence, and that the denial of such motions by a trial court has occasionally been reviewed by this Court through the common law writ of certiorari. *Moody*, 160 S.W.3d at 515. This avenue of remedying errors was based upon the well-settled law that "[a]s a general rule, a trial judge may correct an illegal, as opposed to a merely erroneous, sentence at any time, even if it has become final." *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978). *Moody*, 160 S.W.3d at 515 (citing *Cox*, 53 S.W.3d at 294). The *Moody* court adhered to the rule stated in *Burkhart*, but concluded:

> Tennessee Rule of Appellate Procedure 3(b) does not authorize a direct appeal of a dismissal of a motion to correct an illegal sentence, the method of attack utilized by Moody. We clarify that the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus, the grant or denial of which can then be appealed under the Rules of Appellate Procedure. *See Stephenson v. Carlton*, 28 S.W.3d 910, 912 (Tenn.2000) (holding that an illegal and void sentence was properly challenged in a petition for writ of habeas corpus).

Id.; *see also Jasper D. Lewis v. Cherry Lindamood*, No. M2005-02104-CCA-R3-HC, 2006 WL 256437, at *2 (Tenn. Crim. App., at Nashville, Aug. 31, 2006), *no perm. to appeal filed* (concluding that the erroneous notation on the judgment of conviction that the petitioner, who was sentenced to life imprisonment, was a Range I, Standard offender, with a thirty percent release eligibility, was void on its face because the erroneous notation was in direct contravention of the controlling statute).

At the time the petitioner in *Jasper D. Lewis* was sentenced for his first degree murder conviction, Tennessee Code Annotated section 40-35-501(h)(1) provided that an individual serving a life sentence for first degree murder was not eligible for release until service of sixty percent of sixty years, and in no event less than twenty-five years. The State argued that the petitioner's sentence was not void but merely contained a clerical error. *Jasper D. Lewis*, 2006 WL 2563437, at *1.

Because the face of the petitioner's judgment revealed that the petitioner's life sentence was structured in terms outside the limits of the 1989 Sentencing Act, the *Lewis* panel concluded that the judgment was void, and the petitioner was entitled to habeas corpus relief. *Id*., at *3. Accordingly, the trial court's dismissal of the petition for habeas corpus relief was reversed, and the case was remanded to the trial court to transfer the case to the convicting court for correction of the judgment to reflect the proper release eligibility classification. *Id*.; *see also Smith*, 202 S.W.3d at 130 (holding that "where the illegality infects only the sentence, only the sentence is rendered void and habeas corpus relief may be granted to the extent of the sentence only").

In *Smith v. Lewis*, our supreme court concluded that a judgment imposing a sentence for rape of a child which suggests the possibility of early release is void and subject to correction by writ of habeas corpus. *Smith*, 202 S.W.3d at 125. In that case, the defendant's sentence for his conviction of rape of a child was statutorily required to be served in its entirety without *any* early release eligibility under the 1989 Sentencing Act. *Id*. at 127-128 (quoting T.C.A. § 39-13-523(b) and (c)) (emphasis added). The original judgment of conviction, however, indicated that the defendant was eligible for early release upon serving thirty percent of his sentence. An amended judgment of conviction indicated that the defendant was eligible for early release upon serving eighty-five percent of his sentence. The supreme court concluded that "[t]he judgment in both its original and amended forms therefore contain[ed] on its face an illegal sentence." *Id*. at 128.

Neither the written plea agreement nor the transcript of the plea hearing referenced any early release eligibility. Thus, the record supported a finding that early release eligibility was not a bargained for element of the defendant's plea, and that the trial court "made an error sua sponte [on the judgment form] and independent of the plea bargain." *Id*. at 130. The court further noted that the sentence the defendant actually bargained for and received of fifteen years was legal. *Id*. at 129. Accordingly, the court concluded that the defendant's plea of guilty and the resulting conviction were not "infected with the illegality" and remained intact. *Id*. at 130.

The record before us in the case *sub judice* indicates that the trial court, albeit sentencing Petitioner under the applicable sentencing act, made sua sponte errors on the judgment form which reflect that Petitioner was convicted of a "Class A felony" and sentenced as a "standard Range I (30%) offender," implicating a release eligibility other than what was statutorily required for his life sentence. The judgment form therefore contains errors which are in direct contravention of the statutory provisions governing Petitioner's sentence, and Petitioner is entitled to habeas corpus relief.

As the *Smith* court made clear, however, "where the illegality infects only the sentence, only the sentence is rendered void and habeas corpus relief may be granted to the extent of the sentence only." *Smith*, 202 S.W.3d at 130. Petitioner's underlying conviction remains intact. *Id*.

CONCLUSION

After a thorough review, we reverse the Bledsoe County Circuit Court's dismissal of the petition for habeas corpus relief. Upon our remand, that court shall transfer the case to the Union

County Criminal Court for correction of the judgment to eliminate the "Class A felony" and "standard, Range I, (30%) offender" notations from Petitioner's judgment of conviction.

_____
THOMAS T. WOODALL, JUDGE